

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southern California Edison Company

Docket No. ER05-1154-000

ORDER ACCEPTING AND SUSPENDING RELIABILITY SERVICE RATE
REVISIONS, AND MAKING THEM EFFECTIVE SUBJECT TO REFUND AND
SUBJECT TO THE OUTCOME OF OTHER PROCEEDINGS

(Issued August 24, 2005)

1. On June 28, 2005, Southern California Edison Company (SCE) filed a proposed modification to its Transmission Owner Tariff (TO Tariff) in order to revise its revenue requirement and rates for its 2005 Reliability Services. SCE also filed revisions to two existing transmission contracts to reflect the proposed Reliability Services rates.¹ As discussed below, the Commission will accept as modified and suspend the revised Reliability Services revenue requirement and rates, and make them effective subject to refund and subject to the outcome of the proceeding in Docket No. ER04-1209-001, *et al.* The Commission will deny waiver of its prior notice requirement, and will allow the revised Reliability Services revenue requirement and rates to become effective August 28, 2005, after sixty days from the date of SCE's filing.

I. Background

2. According to SCE, the California Independent System Operator Corporation (CAISO) incurs certain reliability-related costs in support of transmission service provided by the CAISO. The CAISO charges these costs to the transmission owners, including SCE. SCE then passes these CAISO charges through to its customers under SCE's TO tariff, through the Reliability Services rate schedule. These Reliability Services costs include: (1) Reliability Must Run (RMR) service costs; (2) Out of Market (OOM) costs; and (3) Must-Offer Obligation (MOO) costs.

3. SCE asserts that, effective November 8, 2004, as a result of a new Market Operating Procedure introduced by the CAISO (Operating Procedure M-438), SCE included a provision that would allow it to recover the costs of local area reliability

¹ The two existing transmission contracts are between SCE and the City of Colton, California, and Arizona Electric Power Cooperative, Inc., respectively.

capacity commitment through its Reliability Services rate.² Under Operating Procedure M-438, SCE asserted it would commit generating resources identified by the CAISO under SCE's dispatch control when the instructions under Operating Procedure M-438 procedures indicate that it must do so. SCE also asserts that it will revise its day-ahead schedules to incorporate those resources as needed to maintain reliable grid operation and local area reliability.

4. SCE contends that it passes the Reliability Services costs through to its customers and records the receipts from customers and invoices from the CAISO in its Reliability Service Balancing Account (RSBA). SCE states that its RSBA is a mechanism that ensures that SCE does not over- or under-collect costs it has to pay to the CAISO from its ratepayers. Each year, SCE states that it determines a Reliability Services revenue requirement, and develops rates to collect that amount from its end-use customers, as well as Wholesale and Wheeling Customers in its service area.

5. Currently, SCE's Reliability Services revenue requirement, rates and Operating Procedure M-438 costs are before the Commission in several dockets, which were set for hearing and settlement judge procedures and which have been consolidated.³

II. Description of Filing

6. In the instant submittal, SCE proposes an out-of-period adjustment to its existing Reliability Services revenue requirement and rates, and requests an effective date of June 1, 2005. SCE proposes an increase in its Reliability Services revenue requirement to \$155,017,027, a change of approximately \$70 million.⁴ According to SCE, it has experienced higher Reliability Services costs than were forecast in its 2005 true-up filing. SCE states that this has resulted in an increased under-collected balance in its RSBA. SCE states that as of May 31, 2005 its RSBA showed an undercollection of \$60,832,259. SCE states that this is an increase from its previous RSBA balance shortfall of

² According to SCE, CAISO posted Operating Procedure M-438 on August 24, 2004, in order to allow Load Serving Entities to assist the CAISO in reliably operating the grid.

³ Docket Nos. ER04-1209-001 and EL05-29-000-*Southern California Edison Co.*, 109 FERC ¶ 61,263 (2004) (*SCE*); Docket No. ER05-410-000-*Southern California Edison Co.*, 110 FERC ¶ 61,190 (2005); Docket No. ER05-763-000-*Southern California Edison Co.*, 111 FERC ¶ 61,247 (2005).

⁴ SCE's existing Reliability Services revenue requirement of \$85,352,237 was accepted for filing, suspended and made effective subject to refund, and set for hearing. See *Southern California Edison Company*, 110 FERC ¶ 61,190 (2005).

\$7,653,737 in 2004 which was used in the 2005 true-up filing. SCE asserts that, absent a rate increase in its Reliability Services rates, its RSBA under-collected balance will increase to over \$99 million by the end of 2005.

7. SCE explains that a significant amount of the increase in the RSBA balance is due to Must-Offer Obligations that have been billed to SCE from the CAISO. Through May 2005, SCE states it has paid \$51.1 million in Must-Offer service costs to the CAISO. In addition, SCE states it has begun incurring Reliability Services costs associated with Operating Procedure M-438. SCE expects that these costs will amount to approximately \$17.1 million for this summer alone and that it did not include these costs in its 2005 true-up filing, effective January 1, 2005. SCE summarizes its revised forecast of Reliability Services revenue requirement as follows:

Reliability Must Run Forecast:	\$63,972,000
Local Out Of Market Services Forecast:	\$-15,244
Must Offer Obligation Services Forecast:	\$41,160,312
M-438 Service Forecast:	\$19,827,000
Undercollected RSBA Balance:	<u>\$30,072,939</u>
	\$155,017,027

8. Finally, included in its RSBA is \$1,113,649 of Operating Procedure M-438 costs that were incurred by SCE in October and November of 2004.

III. Notice, Interventions, and Protests

9. Notice of SCE's filing was published in the *Federal Register*, 70 Fed. Reg. 39,765 (2005), with interventions or protests due on or before July 19, 2005. The California Public Utilities Commission filed a notice of intervention. Arizona Electric Power Cooperative, Inc. and Southwestern Transmission Cooperative, Inc., jointly filed a timely motion to intervene. Northern California Power Agency and M-S-R Public Power Agency also filed timely motions to intervene. Southern California Water Company (Southern California Water), Metropolitan Water District of Southern California (Metropolitan Water District), the California Department of Water Projects (DWP), and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) filed timely motions to intervene and protests. The City of Pasadena filed an untimely motion to intervene and protest.

10. The protesting parties raise several issues regarding SCE's Operating Procedure M-438 costs included in the Reliability Service revenue requirement. Southern California Water contends that the 2004 Operating Procedure M-438 costs that SCE is attempting to include should be disallowed. According to Southern California Water, SCE did not have a filed rate that allowed for the inclusion of such costs during the period that SCE claims to have incurred those costs.

11. Southern California Water requests that the proposed rates be set for hearing because the cost support for the services is included in privileged documentation and cannot be reviewed. Southern California Water further points out that review of Operating Procedure M-438 costs is currently before the Commission and that the outcome of the instant proceeding depends on the outcome of that proceeding.⁵

12. Metropolitan Water District claims that SCE has overstated its projected Operating Procedure M-438 costs through SCE's failure to identify what load is included in SCE's forecast of daily peak load used in calculating its projected Operating Procedure M-438 costs. Metropolitan Water District claims that it is impossible to determine whether that amount appropriately excludes pump storage load, as required by Operating Procedure M-438. Metropolitan Water District asserts that, if the pump storage load is not excluded, SCE will overstate its Operating Procedure M-438 costs.

13. DWP states that SCE has not shown that the proposed Operating Procedure M-438 costs have been incurred in a manner consistent with Operating Procedure M-438. DWP also contends that SCE has not shown good cause to grant waiver of the Commission's prior notice requirement, and further argues that the Commission should suspend the proposed rates for the maximum five month period.

14. Southern Cities and Pasadena contend that the application of Operating Procedure M-438 raises concern over the mixing of generation and transmission costs. Southern Cities also contend that, because Operating Procedure M-438 was not put in place by the CAISO until August 10, 2004, it is unclear whether the three scheduled Operating Procedure M-438 units (contracted for by SCE) are units for which SCE had generation entitlements prior to the adoption of that procedure. They question if SCE had generation entitlements in those units, why do they now qualify as Operating Procedure M-438 units. Southern Cities also state that the fact that SCE takes energy from certain Operating Procedure M-438 units but not others creates the potential for SCE to decide which of those units to dispatch based on economic decisions designed to benefit its retail load. Finally, Southern Cities are concerned that Colton may be asked to pay costs of SCE-negotiated Operating Procedure M-438 contracts that may not have been prudently incurred; SCE has forecast to pay almost \$14 million in capacity costs for Operating Procedure M-438 services, and the contracts have not been able to be reviewed by outside parties.

⁵ See *supra* note 3. In Docket No. ER05-763-000, the Commission accepted for filing, suspended and made effective subject to refund, and established hearing procedures for revisions to Operating Procedure M-438. See *Southern California Edison Company*, 111 FERC ¶ 61,247 (2005).

15. The protesting parties also take issue with the other components of the Reliability Service rates. Southern California Water is concerned with the Minimum Load Compensation Costs that are included as part of the Must-Offer Obligation component of the Reliability Service rate. Southern California Water states that the Must-Offer Obligation costs incurred by SCE in December 2004 are improperly included in the 2005 rates through the RSBAs, improperly inflating the revenue requirement. Southern California Water requests that this issue be set for hearing.

16. DWP asserts that the Reliability Services costs incurred by the CAISO are spiraling out of control, most notably Must-Offer costs. DWP states that, while the Must-Offer costs alone have significantly increased, these services do not contribute to transmission reliability and are power purchase costs rather than transmission-related costs.⁶

17. Metropolitan Water District contends that SCE was aware of the mounting Must-Offer Obligation charges being billed by CAISO to SCE through April 2005. However, Metropolitan Water District argues that SCE has not explained the delay in submitting the instant filing, and has not established good cause for granting waiver of the prior notice requirement. Thus, Metropolitan Water District asserts the Commission should deny SCE's requested waiver. Finally, Metropolitan Water District requests that the Commission consolidate this proceeding with the on-going proceeding in Docket No. ER04-1209-000, *et al.*

18. On August 1, 2005, SCE filed an answer to the protests. On August 3, 2005, Southern California Water filed a response to SCE's answer.

III. Discussion

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Pasadena's motion to intervene out-of-time given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept SCE's answer to the protests and will, therefore, reject it. Likewise, we will reject Southern California Water's answer to SCE's answer.

⁶ DWP protest at 8.

20. We agree with the parties that any amounts included in the RSBA relating to costs associated with Operating Procedure M-438 for periods prior to November 8, 2004 must be removed from the proposed revenue requirement and rates. As SCE's filing to recover the Operating Procedure M-438 costs became effective by operation of law, it could not go into effect prior to November 8, 2004.⁷ Prior to November 8, 2004 there was no provision to recover these costs. Therefore SCE must file revised rates within 30 days to remove any costs associated with the Operating Procedure M-438 amounts for the periods prior to November 8, 2004.⁸

21. The Reliability Services rates here are pass through rates and the costs at issue are currently being examined in ongoing hearing and settlement judge procedures. Accordingly, we will accept and suspend SCE's filing and make it effective August 28, 2005, subject to refund and subject to the outcome of the proceedings in Docket No. ER04-1209-001, *et al.*⁹

22. Finally, we deny waiver of our prior notice requirement and will allow the proposed Reliability Services rates to become effective August 28, 2005, after sixty days from the date of filing. SCE has not presented any extraordinary circumstances that warrant waiver of the 60-day prior notice requirement in this instance.¹⁰ SCE's TO Tariff

⁷ SCE filed the proposed RSBA rates on September 8, 2004. Although SCE asked for a September 10, 2004 effective date, the Commission did not act on that request prior to the RSBA rate going into effect by operation of law. Accordingly, under 16 U.S.C. § 824(d) (2000), and 18 C.F.R. § 35.3 (2005), the rates could not go into effect sooner than after 60 days from the date of filing, *i.e.*, November 8, 2004. Our statement in the December 10, 2004 Order, 109 FERC ¶ 61,263 (2004), that the rates became effective September 10, 2004 was in error. *Boston Edison Co.*, 101 FERC ¶ 61,068 at P 8-9 (2002).

⁸ *See, e.g., Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir 1990).

⁹ Docket No. ER05-410-000 has been consolidated with Docket Nos. ER04-1209-001 and EL05-29-000. *Southern California Edison Company*, 111 FERC ¶ 61,247 (2005).

¹⁰ *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

provides for annual updates to the Reliability Services revenue requirement and rates to be made effective January 1 of each year. SCE's TO Tariff does not provide for an interim-period filing and specific date on which that filing will be made effective.¹¹

23. If waiver of the prior notice requirement is denied and the proposed rate has been charged without Commission authorization, we require the utility to refund to its customers the time value of the revenue collected for the entire period that the rate was collected without Commission authorization.¹² Therefore, we will require SCE to refund the time value of the revenues actually collected for the time period that the rates were charged without Commission authorization until the date refunds are made.

The Commission orders:

(A) SCE's proposed Reliability Services revenue requirement and rates are hereby accepted for filing and suspended, to become effective August 28, 2005, subject to refund and to the outcome of the proceedings in Docket No. ER04-1209-001, *et al.*

(B) SCE is hereby directed to remove the Operating Procedure M-438 costs incurred prior to November 8, 2004 from its RSBA, as discussed in the body of this order. To the extent that SCE has collected any portion of these costs, SCE is directed to refund that portion, with interest, within 30 days of this order.

(C) SCE is hereby directed to refund the time value of any revenues collected without Commission authorization, as discussed in the body of this order, within 30 days of this order.

(D) SCE is hereby directed to file a refund report with the Commission within 30 days after making the refunds.

¹¹ *Id.* Furthermore, while SCE's forecast here is premised upon the increasing under-collected balance of its RSBA, SCE has not shown that the remaining months for the annual period will not sufficiently compensate SCE for Reliability Services costs charged by the CAISO through the end of the year.

¹² *El Paso Electric Company*, 105 FERC ¶ 61,131 (2003).

(E) Within 60 days of the issuance of the final order in the Docket No. ER04-1209-001, *et al.*, SCE is hereby directed to make a compliance filing incorporating the necessary changes to its Reliability Services revenue requirements and rates, based on the outcome of those proceedings, as discussed in the body of this order, and to make refunds with interest. SCE is hereby directed to file a refund report with the Commission within 30 days after making refunds.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.